

If you wish to appear for oral argument, you must so notify the court and opposing counsel by 4:00 p.m. one court day before the hearing, pursuant to California Rules of Court, rule 3.1308. The court telephone number is (209) 533-6524.

Absent a request for oral argument, the tentative ruling will be adopted as final at the time set for hearing.

1. CV58808 Charles O. Gates, et al. v. Thomas Ritz, et al.

Motion: Motion to Tax Costs

Moving parties: Plaintiffs/Cross-Defendants

Tentative ruling: The motion is GRANTED in part and DENIED in part.

The Court GRANTS the motion as to the following items in the Memorandum of Costs filed on June 27, 2016, and strikes them:

- a. Item 5—Service of process: Fees for service of process are recoverable as costs when those fees are incurred for personally serving things like summons and subpoenas. Here, the fees sought are for preparing proofs of service in connection with mailing documents that were properly served by mail and did not require personal service.
- b. Item 8—Witness fees: The Ritzes claim \$989.00 for fees paid to an expert witness. Code of Civil Procedure section 1033.5, subdivision (b)(1) specifically excludes fees of experts that were not ordered by the Court. In this case, the Court did not order any expert testimony. In addition, the Ritzes have not provided any evidence that they served a written settlement offer that would satisfy the requirements of Code of Civil Procedure section 998.
- c. Item 9—Court-ordered transcripts: The Court did not order any transcripts. The Court did obtain a copy of the transcript ordered by the Ritzes. The copy obtained by the Court did not cost the Ritzes anything and is not part of the costs sought by them.
- d. Item 13—Other: The Ritzes claim the fees they incurred for obtaining two surveys. Some of these fees were incurred well before any litigation was commenced. In addition, the surveys serve other purposes beyond this litigation. Finally, the costs for the survey work are in essence expert testimony and therefore subject to the same defects as discussed above in paragraph (b).

The motion is DENIED as to item 11 in the Memorandum of Costs. The Court finds these costs were necessary and are recoverable under Code of Civil Procedure section 1033.5.

Item 10—Attorney fees: These fees are the subject of a noticed motion and will be addressed at that hearing.

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2. CV60001 Roger and Virginia Gunderson v. Berit Brown, et al.

Motion #1: General and Special Demurrer
Moving parties: Defendants Academy Mortgage and Vivian Griswold

Tentative ruling: The demurrer is SUSTAINED with leave to amend as to the first through third causes of action. The demurrer is OVERRULED as to the fourth cause of action.

Analysis

The first through third causes of action fail to state a cause of action and lack certainty. Neither fraud nor negligent misrepresentation has been pleaded with the required specificity as to each defendant and each element of the causes of action. To the extent the elder abuse claim is premised on fraud, which it appears to be, it similarly fails.

The demurrer is overruled as to the claim for breach of fiduciary duty because Defendants challenged it by disputing Plaintiffs' factual allegations in the complaint—namely, the characterization of Ms. Griswold as a mortgage broker—but the Court must accept those allegations as true for purposes of the demurrer.

Motion #2: Motion to Strike Portions of Plaintiffs' Complaint
Moving parties: Defendants Academy Mortgage and Vivian Griswold

Tentative ruling: Based on the rulings on the demurrers, the motion to strike is MOOT, as Plaintiffs have been given leave to amend their complaint.

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Motion #3: Demurrer
Moving party: Defendant Dan Epperson

Tentative ruling: The demurrer is SUSTAINED with leave to amend.

Analysis

The first through third causes of action fail to state a cause of action and lack certainty. Neither fraud nor negligent misrepresentation has been pleaded with the required specificity as to each defendant and each element of the causes of action. To the extent the elder abuse claim is premised on fraud, which it appears to be, it similarly fails.

The Court notes that its ruling is not based on Mr. Epperson's argument that he cannot, as a matter of law at the demurrer stage, be found to owe any duties to Plaintiffs. At this stage of the litigation, Mr. Epperson's reliance on *Willemssen v. Mitrosilis* (2014) 230 Cal.App.4th 622 is misplaced, because the decision about the appraiser's liability in *Willemssen* was based on evidence presented as part of a motion for summary judgment.

3. CV60088 Derek Freligh v. Quality Loan Service Corp., et al.

Motions: (1) Demurrer
 (2) Motion to Strike
Moving party: Defendant Wells Fargo Bank, N.A.

Tentative ruling: No tentative ruling is available.

The Court will consider only the demurrer, as the demurrer and motion to strike were improperly combined in a single document and only one motion fee was paid.

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4. CV60098 Jason R. Frye v. City of Sonora, et al.
- Motion: Specific [sic] Demurrer and General Demurrer to Answer to Verified Complaint
- Moving party: Plaintiff
- Tentative ruling: The demurrer is SUSTAINED as to the third affirmative defense.
The demurrer is OVERRULED as to all other affirmative defenses.

Analysis

Code of Civil Procedure section 458 requires a defense based on the statute of limitations to be pleaded with the applicable statutory section and subdivision.

5. CV60114 Donald Jageman v. Sonora Community Hospital, et al.
- Motions: (1) Demurrer
 (2) Motion to Strike Punitive Damages and Attorney Fees
- Moving parties: Defendants Sonora Regional Medical Center, Adventist Health, and Jolene Andrews
- Tentative ruling: No tentative ruling is available.

On August 17, 2016, the moving Defendants filed a request to drop their demurrer and motion to strike from the calendar, as Plaintiff filed an amended complaint on August 8, 2016.